



State of Arizona
Department of Education

Tom Horne
Superintendent of
Public Instruction

CN# 19-05

MEMORANDUM

To: School Health & Nutrition Program Sponsors

From: Mary Szafranski, Deputy Associate Superintendent
Arizona Department of Education, Health & Nutrition Unit

Holly Mueller, Program Director
Arizona Department of Education, School Health & Nutrition Programs

Date: October 15, 2004

RE: Q & A-Federal Procurement Guidelines

The purpose of this memo is to provide further guidance and understanding regarding various procurement issues related to the Child Nutrition Programs. Therefore, the following issues have been presented in a Q & A format to help facilitate this process.

- Q1. How did regulations 7 CFR Parts 3016 and 3019 change the procurement procedures for public and non-profit LEAs?
- A. The Part 3016 regulation implements the concept of Federalism for public LEAs administering the Child Nutrition Programs. This means the LEA will be guided by state and local laws and regulations related to procurement, as long as those procedures are consistent with the requirements of Part 3016. A non-profit LEA may elect to follow the procurement procedures of Part 3019 or use its own organizational procedures as long as those procedures are consistent with this provision.
- Q2. Please explain what is 7 CFR Part 3016?

- A. The federal regulations establish the minimum standards an LEA must follow to conduct a proper procurement. Some of these standards include: methods of procurement; cost or price analysis; and required contract clauses and certifications. It also includes language related to developing and drafting bid/proposal specifications (refer to policy memo CN# 18-05 for more information).
- Q3. Does Part 3019 contain the same requirements and prohibitions for non-profit LEAs?
- A. The minimum standards of Part 3019 a non-profit must follow in conducting procurements are generally the same that apply to a public LEA.
- Q4. Do the specific procurement and contract clause requirements of the program regulations still apply?
- A. Yes. For example, the requirements regarding the 21-day cycle menu requirement and duration of contracts still apply to Food Service Management Company (FSMC) procurements and contracts.
- Q5. Does Federalism prevent the SA from establishing procurement and contract requirements that LEAs must follow?
- A. No. The concept of Federalism allows the SA to establish state and local laws and regulations related to procurement the LEA must follow as long as those procedures are consistent with the requirements of Part 3016.
- Q6. Can the LEA follow the procurement procedures of 7 CFR Part 3106 instead of its own state and local requirements?
- A. No. The LEA cannot substitute Part 3016 for more restrictive state or local requirements.
- Q7. Whom should a SA contact to obtain information about the procurement requirements that apply to a public LEA?
- A. The SA should seek guidance from their state procurement official and legal counsel or chief state legal official. The LEA should contact the Health and Nutrition Contracts Officer for procurement related issues.
- Q8. Does applying Parts 3016 and 3019 to LEA procurements change the Food and Nutrition Service (FNS) position on the crediting of discounts and rebates in cost reimbursable contracts?
- A. No. FNS strongly encourages, but does not require, that all cost reimbursable contracts include provisions to ensure the LEA is only charged net, allowable costs.

- Q9. If state law exempts public school from complying with state bid laws, is the LEA exempt from all procurement requirements?
- A. No. The LEA would still be required to comply with local procurement requirements, any applicable program requirements and the provisions of Part 3016.
- Q10. Are there any actions a SA must take when it determines its LEAs must follow Part 3016 because there are no state or local procurement requirements applicable to LEA procurements?
- A. Yes. Based on Public Law, 105-336, the William F. Goodling Child Nutrition Reauthorization Act of 1998, FNS is requesting the SA provide written confirmation from the chief state legal official that the state's public LEAs must follow Part 3016 because no applicable state or local requirements apply to its public schools.
- Q11. If questions or disputes arise concerning a public LEAs procurement practices or contracts, do we still contact FNS for guidance?
- A. No. These issues include contract management and compliance matters such as questions related to source evaluations, protests, disputes and claims. FNS will not substitute its judgment for that of the SA or LEA on issues unless the matter is primarily a Federal concern.
- Q12. Doesn't the Federalism concept result in differences between states regarding procurement procedures and contract requirements and even between LEAs within the same state?
- A. While procedural practices may differ, the fundamental requirements do not. Most public LEAs already operate under requirements that recognize the procurement principles incorporated in Part 3016, such as the requirement for full and open competition and the prohibition against conflicts of interest. To the extent procurement requirements do not exist or are less restrictive than those contained in Part 3016, the common rule requirements continue to apply. FNS strongly encourages LEAs include, in all solicitations and contracts, terms that protect the nutritional and financial integrity of the school nutrition programs.

If you have any questions or concerns regarding this memo, please contact the Health and Nutrition Contracts Officer, Brian Walsh at (602) 542-6208 or bwalsh@ade.az.gov.